YEARBOOK OF EUROPEAN UNION AND COMPARATIVE LAW-YEUCL
Vol.2, 2023 Article 9

The anniversary of the Van Duyn ruling and the direct effect of the directives. The challenge of European integration "of sources"

Shannon Seidel

DOI:10.5281/zenodo.10694034

The anniversary of the Van Duyn ruling and the direct effect of the directives. The challenge of European integration "of sources"

DOI:10.5281/zenodo.10694034

Shannon Seidel, post Ph.D, Legal advisor, UK

Abstract: This paper aims to use the jurisprudence of the Court of Justice of the European Union to show the importance of a difficult journey that began with the Van Duyn v. Home Office (1974) C-41/74 which this year marks 50 years. The direct effectiveness or direct effect of directives has been a topic that has tortured jurisprudence as well as doctrine for many years since it was synonymous with the justiciability that addressed the process of European integration as well as the private enforcement of the EU for the protection of private individuals. The many rights, the still new innovations, the open problems and the path taken up to today still shows that the constitutional architecture of the EU continues in the sector of the primacy of the law of the EU.

Keywords: direct effect; directives; fundamental principle; primacy of EU; European Union law; restrictions; horizontal effect; cooperative federalism; dual federalism; ex directive 2015/1535; Mangold scheme.

Introduction

The direct effectiveness or direct effect of directives in the legal systems of the Member States (Bobek, 2020; Schütze, 2021; De Witte, 2021) and the reference to the ability of a rule of Union law to be applied by a national judge began with the Van Duyn ruling which this year marks 50 years (Simmonds, 1975)[1]. Direct effectiveness as a synonym of justiciability contributes not only to European integration in the field of sources but also to the function as a guarantee of the effectiveness of the law of the Union (Curtin, 1990; Snyder, 1993) and as an important point for the evolution of the EU law (Komàrek, 2013)[2] and for the instruments of private enforcement of the EU and the protection of private individuals. Time does not determine the scientific interest that respects the protection of individual rights and the regulatory exercise of the Union but the constitutional architecture of the EU.

1CJEU, 41/74, Van Duyn of 4 December 1974, ECLI:EU:C:1974:133, I-01337: "(…) any passenger (…) may be refused leave to enter on the ground that the conclusion is conducive to the public good where from information available to the Immigration Officer it seems right to refuse leave to enter on that ground-if for example in the light of the passenger's character, conduct or associations it is undesirable to give him leave to enter (…)".

2CJEU, 33/70, SACE of 17 December 1970, ECLI:EU:C:1970:118, I-01213, parr. 15-18. 9/70, Grad v. Finanzamt Traunstein of 6 October 1970, ECLI:EU:C:1970:78, I-00825, parr. 5-6. 148/78, Ratti of 5 April 1979, ECLI:EU:C:1979:110, I-01629, par. 22. C-57/65 Lütticke GmbH v. Hauptzollamt Sarrelouis of 16 June 1966, ECLI:EU:C:1966:34, I-00293.

According to Schütze the directive represents the most mysterious act of the Union that is “intrigue, dérange, divide” (Kovar, 1987; Schütze, 2021). The direct effect appears as a marginal theme of the EU's reflections. This observation affects the quantitative profile as an act that has experienced a recessionary trend over the years. Direct effect is considered through jurisprudence, as a peculiarity of the application of the traditional test of the direct effect of directives both in time and in space as open questions that all this time are part of the panorama of exceptions of the prohibition of horizontal direct effect of directives and as technical rules that examine the extent of the horizontal direct effect. The extension of the Mangold scheme as primary law in horizontal disputes and as norms of the principle of non-discrimination are part of the functional link between the direct effect and the obligation of disapplication of the remedy principle as it presented an incompatibility between domestic law and the right of the EU. The attempt at rationalization and systematization of the problem examines the idea of cooperative federalism in the legal system of the Union (Corwin, 1950; Schütze, 2009).

Sources of EU law: Directives

Art. 288 TFEU (Blanke, Mangiamelli, 2021) notes the characteristics of the Union as a mediated (Simon, 1997) and

indirect source of the Union. The directives respond to the needs of the decision-making process (Prechal, 2006) and represent a subsidiarity tool as an expression of the principle of proportionality. The effectiveness of the directive in national legal systems ensures the transposition of national law as a set of rules that Member States adopt in fulfillment of their obligations of the directives that guarantee the principle of effectiveness (Frantziou, 2019).

The origins of the integration process (Constantinesco, 1977; Timmermans, 1979) are part of the origin of a severed part where the direct effect comes into relief only in pathological situations which constitutes the exception[3]. The main functions concern the functions connected with the use of the directive, as a useful tool of a regulatory instrument. The directive is useful and it is not possible, rectius appropriate to pursue the unification of regulatory systems as a liberalization tool that regulates markets, public services and to facilitate the competitive conditions of the internal market and its good functioning (Prechal).

These macro-categorical figures are of primary interest in the systematic classification that orders them as sources of law into different categories[4], as a teleological criterion in the precise

3CJEU, 26/62, Van Gend and Loos of 5 February 1963, ECLI:EU:C:1963:1, I-00003.

4Such as directives for completion and integration of the rules that are part of the treaty; supporting directives that enable the treaty or secondary legislation to achieve its intended objectives; the liberalization directives; the harmonization directives and

function of the treaty system. Other directives appear to be complementary, integral to the rules of the treaties which limit and approximate the legislation of the Member States to ensure equal conditions of competition between economic operators. The functional connection between the directive and primary law represents a central element that ignores the reflections and adequacies that contain the direct effect. Not all directives are the same for examining the suitability of the rules that have direct effect for horizontal disputes, regardless of the specific function of the directive which performs a system of treaties as a functional link between it and the rules of Union law (Easson, 1981; Wyatt, 1983).

The directives are distinguished in private law directives and in public law directives (Dashwood, 2006-2007). Private law directives concern legal relationships that do not exist between subjects of private law. The latter deal with legal relationships as a discipline that is applied in the exercise of public power by Member States[5]. This differentiation has particular importance because it specifies the relationship between private law directives which are connected with some particular matters of

coordination of liberalizing effects; harmonization directives that create competitive conditions between operators; programming directives within the macro-categorical circle that covers the reorganization directives of certain subjects that pursue the harmonization of national legislation.

5CJEU, C-122/17, Smith of 7 August 2018, ECLI:EU:C:2018:631, published in the electronic Reports of the cases, parr. 53-54.

the Union such as the relationship of the employment, the internal effectiveness and the incidental direct effect which is necessary for the public law directives. The nature of the directives outlines the application of the direct effect test as a regulatory tool.

The peculiarities of the test that have to do with the directives. Is this a direct effect?

By direct effect we mean a norm of the Union which precisely represents the test factor (Gallo, 2022). As regards unconditionality, we mean the automatic character of the rule that applies as a test of the direct effect that is applied to directives. This type of test has to do with time, the space where the legal act is involved. Expressions have been used that underline and highlight the application of the relevant conditions (Chalmers, Davies, Monti, 2019), its expansion (Craig, De Burca, 2020) and the notion of the direct effect which considers the relative evolution.

Changing the test as a legal act that involves and highlights the relationship of the directives (Bobek, 2020) respects the direct effect as well as the sources of the law of the Union and knows the limits that do not characterize the other sources. The relative relaxation is sufficient for the provisions of the Directive which are sufficiently precise[6]. The test concerns the content of the

6CJEU, 8/81, Becker of 19 January 1982, ECLI:EU:C:1982:7, I-00053, par. 25.

provision and not its wording. The application of the criterion of unconditionality recognizes a relaxation and considers the implementations that apply in partly peculiar terms as characteristics and in an automatic manner of the norm. The Court of Justice of the European Union already admits that:

"(...) the reservation of a margin of discretion in the implementation of the directive does not preclude the unconditionality (and sufficient precision) of a provision of the directive[7] (…). The discretion reserved for Member States in the implementation of a single provision was considered "wide". This margin of maneuver in favor of the states will preclude the direct effectiveness of the rule (...)" (Barnard, Peers, 2020)[8].

This is a relaxation which with these criteria is represented by the relevant jurisprudence[9], where already in the RTS case of 2021 it concerns the direct effectiveness of the right of self-cleaning in the procurement directives. This is a provision in a directive which states:

"(...) not subject to any conditions nor subordinated, as regards its observance or its effects, to the enactment of any act by the institutions of the Union or the Member States (...) the direct effect of this provision is not precluded by the fact that (...) substantive and procedural conditions of application (...) must be specified by the Member States (...)"[10].

152/84, Marshall of 26 February 1986, ECLI:EU:C:1986:84, I-00723, par. 46; C-188/89, Foster and others v. British Gas of 12 July 1990, ECLI:EU:C:1990:313, I-03313, par. 16; C-187/00, Kutz-Bauer of 20 March 2003, ECLI:EU:C:2003:168, I-02741, par. 69; C-268/06, Impact of 15 April 2008, ECLI:EU:C:2008:223, I-02483, par. 56.

7CJEU, 8/81, Becker of 19 January 1982, op. cit., par. 7.

8CJEU, joined cases C-100/89 and C-101/89, Kaefer and Procacci of 12 December 1990, ECLI:EU:C:1990:456, I-04647, par. 26; C-157/02, Rieser Internationale Transporte of 4 February 2004, ECLI:EU:C:2004:76, I-01477, par. 40; C-384/17, Link Logistic L&N of 4 October 2018, ECLI:EU:C:2018:810, published in the electronic Reports of the cases, parr. 47-56.

9CJEU, joined cases C-397/01 to C-403/01, Pfeiffer of 5 October 2004, ECLI:EU:C:2004:584, I-08835, parr. 104-106.

10CJEU, C-387/19, RTS infra e Aannemingsbedrijf Norré-Behaegel of 14 January 2021, ECLI:EU:C:2021:13, not yet published, parr. 43-50.

In the Bezirkshauptmannschaft Hartberg-Fürstenfeld case (Effet direct)[11] the preliminary ruling of an Austrian regional administrative court affirms that:

"(...) requirement of proportionality of the sanctions referred to in Art. 20 of Directive 2014/67[12] (...) deserves attention for a series of aspects (…). It stands out because it operates an explicit overruling-which finds few precedents in previous jurisprudence (Tridimas, 2012) - of the principle established only a few years earlier in Link Logistic (…). The direct effect of the aforementioned Art. 20 of the directive, pursuant to which (...) Member States establish the sanctions applicable in case of violation of the national provisions adopted in implementation of this directive and of all necessary measures to ensure compliance. The sanctions envisaged are effective, proportionate and dissuasive (...) in Link Logistic, applying the albeit loose criteria briefly mentioned above. The direct (vertical) effect of the principle of proportionality of sanctions enshrined in a provision of a completely similar to the one mentioned[13] had been clearly excluded (...)"[14].

The argumentative process finds application in the criteria that do not characterize the overlap between them. Art. 20 of the directive is linked to the literal wording which provides and formulates with absolute terms[15]. This is a character under discussion which:

"(...) should be the subject of transposition (…). An argument is made (...) focused on the useful effect of Art. 288 TFEU[16] (…). Sufficient precision

11CJEU, C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) of 8 March 2022, ECLI:EU:C:2022:168.

12Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ("the IMI Regulation") Text with EEA relevance, OJ L 159, 28.5.2014, p. 11-31.

13See Art. 9bis of the Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, OJ L 187, 20.7.1999, p. 42-50.

14CJEU, C-384/17, Link Logistic of 4 October 2018, op. cit., parr. 47-56.

15CJEU, C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) of 8 March 2022, op. cit., par. 23.

16CJEU, C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct)

would derive from the fact that although this provision grants Member States a certain margin of discretion in defining the sanctioning regime (...) such a margin of discretion finds its limits in the prohibition, stated in general and unequivocal terms by said provision, to provide for disproportionate sanctions (…)"[17].

The limits of the direct effect of the directives note that the additional conditions that are intrinsic to the direct effect test are applied to this type of act. The characteristics of this regulatory instrument where the direct effect of a directive arises from the transposition of the domestic law in question. It comes into question the directive that corrects the expiry of this deadline[18]. The directives produce legal effects in domestic systems as a standstill obligation[19] which is connected with the principle of loyal cooperation according to Art. 4, par. 3 TEU (Blanke, Mangiamelli, 2021). The conditions satisfy their entirety where the direct effect operates on the Member State in a unidirectional or unilateral manner. The CJEU ruled out that directives impose individual obligations in inter privatis (horizontal) disputes[20] such as the public power entrusting the

of 8 March 2022, op. cit., par. 26.

17CJEU, C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) of 8 March 2022, op. cit., par. 47.

18CJEU, 8/81, Becker of 19 January 1982, op. cit., par. 25. 80/86, Kolpinghuis of 8 October 1987, ECLI:EU:C:1987:431, I-03969, par. 7. joined cases C-397/01 to C-403/01, Pfeiffer of 5 October 2004, op. cit., par. 103.

19CJEU, C-129/96, Inter-Environnement Wallonie of 18 December 1997, ECLI:EU:C:1997:628, I-07411, parr. 35-50.

2080/86, Kolpinghuis of 8 October 1987, op. cit., par. 9. 152/84, Marshall of 26 February 1986, op. cit., par. 48; C-91/92, Faccini Dori v. Recreb of 14 July 1994, ECLI:EU:C:1994:292, I-03325, parr. 22-25; C-192/94, El Corte Inglés v. Blázquez Rivero of 7 March 1996, ECLI:EU:C:1996:88, I-01281, parr. 15-17; joined cases C-397/01 to C-403/01, Pfeiffer of 5 October 2004, op. cit., par. 108; C-282/10, Dominguez of 24 January 2012, ECLI:EU:C:2012:33, published in the electronic Reports of the cases, par. 37.

provision of a directive which is correct to a prejudice to the legal assets of the individual, as a reversed direct effect[21]. The direct effectiveness of the directive determines and aggravates the criminal liability of an individual[22].

Prohibiting the direct effect of horizontal disputes of the directives is subject of the application ratione personae which represents the open issues that are problematic and discussed. The prohibition and exceptions are examined, paying attention to the jurisprudential developments that occur in this regard.

Prohibition of horizontal direct effect in its exceptions

The jurisprudence of the CJEU is the basis of open and evolving arguments[23] that help the path to European integration (Coppel, 1994; Schütze, 2018) especially in the sector of directives and regulations. This jurisprudential path is oriented towards the "conclusion" that:

"(...) a directive cannot in itself create obligations for an individual and cannot therefore be enforced as such against him before a national judge (...) precise and unconditional. A provision of a directive does not allow the national judge to disapply a provision of its domestic law which is contrary to

21152/84, Marshall of 26 February 1986, op. cit., parr. 48-49; C-91/92, Faccini Dori of 14 July 1994, op. cit., par. 22; C-192/94, El Corte Inglés of 7 March 1996, op. cit., par. 16; C-227/09, Accardo and others of 21 October 2010, ECLI:EU:C:2010:624, I-10273, par. 46.

22CJEU, 14/86, Pretore di Salò v. X of 11 June 1987, ECLI:EU:C:1987:275, I-02545, parr. 17-20; C-168/95, Arcaro of 26 September 1996, ECLI:EU:C:1996:363, I-04705, parr. 35-38; joined cases C-387/02, C-391/02 and C-403/02, Berlusconi and others of 3 May 2005, ECLI:EU:C:2005:270, I-03565, parr. 70-78.

23See in argument Art. 288 TFEU and also the case from the CJEU: C-201/02, Wells of 7 January 2004, ECLI:EU:C:2004:12, I-00723, par. 56.

it if, by doing so, an additional obligation would be imposed on an individual (...)"[24].

We can characterize the jurisprudence of the CJEU as creative, unpredictable, development path (Emmert, Pereira De Azevedo, 1993; Dubout, 2010) towards a measure that guarantees the effectiveness of the rights conferred on individuals in the legal system of the Union while avoiding disparity of the vertical and horizontal nature of the legal relationship.

The exceptions to the ban are numerous and argue that the ban has horizontal direct effects that pose the opposite (Tridimas, 2001; Bobek, 2023). Jurisprudential exceptions are elaborated by the CJEU and generate negligible legal uncertainty (Figueroa Regueiro, 2002) to individuals that exceeds the relevant prohibition (Arnull, 1986; Emmert, 1992; Tridimas, 1994; Varner, 2001; Becker, Campbell, 2007; Craig, 2009).

Bobek himself addresses the topic and maintains that:

"(...) it must first of all be remembered that the Court of Justice is not the only actor who, through its action, guarantees the effectiveness of Union law (...) of ferry the effectiveness of the directives up to a certain point, placing a barrier to the widespread phenomenon of incorrect, incomplete, or late transposition of the directives into national systems (Craig, De Burca, 2020), but other institutions can play an equally important role. Among these, the action of the European Commission is of particular importance (...)" (Simon, 1997).

Continuing with Snyder on the topic that:

"(…) the effectiveness ensured by the Court in a specific case brought to its attention is neither the only existing interest worthy of protection nor-interconnectedly-the only dimension of existing effectiveness (…). The

24CJEU, C-573/17, Popławski II of 24 June 2019, ECLI:EU:C:2019:530, published in the electronic Reports of the cases, par. 65.

contribution of each technique or strategy aimed at ensuring said effectiveness should take into consideration its prospective impact, in the medium-long term (...)" (Snyder, 1993).

According to Art. 288 TFEU (Blanke, Mangiamelli, 2021) does not preclude the overcoming of the prohibition on horizontal direct effect that has to do with directives. The political institutions of the EU opt for a directive where the adoption of a regulation which has an abstract nature generalizes the horizontal direct effect in the provisions of the directive which reconciles the horizontal character of the competences between institutions, legislative and judicial power. The legal basis uses the adoption of the directive which excludes the use of a regulation of a vertical nature between the competences of the Union and Member States which is undermined.

The CJEU in relation to the ban raises the perplexities of a practical point which thus establishes the ban only in the case of a jurisprudential revirement which we encountered in the Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) case which in reality seems to even surpass it (Broberg, Fenger, 2022). This is a viable technique that does not allow the direct horizontal effect of the directives but it is not an open question that does not respect previous jurisprudence. This is a consolidated direction without any substantial changes being made to the relevant discipline under investigation.

The jurisprudence was also based on Art. 267, par. 3 TFEU (Blanke, Mangiamelli, 2021) as a strategy of small steps which investigates attention to the potential impact of this type of development. This type of clarification is not so much the subject of the ban but of numerous exceptions to it. The exceptions focus on the direct incidental effect and on the provisions of a directive where, according to the spirit of the Mangold ruling, the steps of the effective horizontal type of prohibition are examined (Craig, 2009).

Among the first exceptions is the creation of additional obligations which prohibits:

"(...) mere negative repercussions on them, permitted (Squintani, Lindenboom, 2019) and verifiable in relation to what we have defined as Public law directives (…). This macro-category, it is possible to distinguish two main scenarios, although other different situations and classifications are certainly possible (...)" (Lackhoff, Nyssens, 1998; Prechal, 2006).

Thus the triangular relationships that represent the disputes between an individual and a Member State are the results of the repercussions also on other private subjects (Colgan, 2002). We find such trends in the sector of public procurement and environmental directives as we can see in the cases of Costanzo[25] brothers and of Wells[26]. These are incidental direct effects according to the relevant jurisprudence (Craig, De Burca, 2020). These are disputes between private parties who invoke a

25CJEU, 103/88, Fratelli Costanzo v. Comune di Milano of 22 June 1989, ECLI:EU:C:1989:256, I-01839.

26C-201/02, Wells of 7 January 2004, op. cit., parr. 56-58.

procedural obligation to notify technical rules of a directive which excludes the applicability of the national technique which is not notified. Positions that we also see in the obligations imposed by Directive 83/189[27]- now Directive 2015/1535[28]-, and in the related CIA Security[29] and Unilever[30] rulings. The jurisprudence has highlighted three main arguments regarding which these are substantive procedural obligations which according to the CJEU have direct effect[31] by applying the traditional test which is pursued by Directive 83/189 relating to the free movement of goods and its nature where the obligation to notify the technical rules serves this purpose[32]. The CJEU underlines that the rulings where the prohibition of direct effects is horizontal has been guaranteed through Directive 83/189[33] which states:

27Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ L 109, 26.4.1983, p. 8-12.

28Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification) (Text with EEA relevance), OJ L 241, 17.9.2015, p. 1-15.

29CJEU, C-194/94, CIA Security International of 30 April 1996, ECLI:EU:C:1996:172, I-02201

30CJEU, C-443/98, Unilever of 26 September 2000, ECLI:EU:C:2000:496, I-07535.

31CJEU, C-194/94, CIA Security International of 30 April 1996, op. cit., parr. 32-50.

32CJEU, C-194/94, CIA Security International of 30 April 1996, op. cit., parr. 48-50.

33CJEU, 152/84, Marshall of 26 February 1986, op. Cit.

"(...) does not define in any way the substantive content of the legal rule on the basis of which the national judge must decide the dispute pending before it. It creates neither rights nor obligations for individuals (...)"[34].

Moving on to a reconnection of the sentences of CIA Security and Unilever (Craig, De Burca, 2020) which enter into the direct effect of the objective, oppositional nature of situations where the individual invokes the rule of a directive before a judge or other authority national order to preclude the application of a conflicting state measure (Ruffert, 1997). The legitimacy parameter of the national measure (invocabilité d'exclusion) (Galmot, Bonichot, 1988; Simon, 1997; Craig, 2009) has to do with the disapplication, non-application of the latter which for decades has been considered as the principle of primacy and not as a principle of direct effect also admissible in horizontal disputes (Louis, Vandersanden, Waelbroeck, Waelbroeck, 1993; Corthaut, 2006; Lenaerts, Gutièrrez-Fons, 2010).

This type of arrangement of the invokability of exclusion of the jurisprudence in the CIA Security and Unilever cases to a gender relationship is no longer acceptable nowadays[35] and especially after the Popławski II judgment[36] which the related uncertainties having to do with the direct effect, primacies and disapplication.

34CJEU, C-443/98, Unilever of 26 September 2000, op. cit., par. 51.

35CJEU, C-122/17, Smith of 7 August 2018, op. cit., par. 34; C-369/89, Peters I of 18 June 1991, ECLI:EU:C:1991:256, I-02971. C-85/94, Piageme v. Peeters of 12 October 1995, ECLI:EU:C:1995:312, I-02955.

36CJEU, C-573/17, Popławski II of 24 June 2019, op. cit.

Moving on to the exception of the notion of individual which is contrary to the notion of the Member State, it is understood as a body or entity that is subject to the authority and control of the state which, regardless of its form, provides powers that go beyond the limits resulting from the rules that they apply in relationships between individual subjects[37].

As regards the directive "per se" and/or "as such", no other additional obligations are placed on individuals as they are connected to a source of primary law or to the Union law which is capable of explaining the direct effects for the horizontal disputes. The connection between the provisions of a directive and the legislation of the Union concerns the second level provisions, i.e. the provisions of a regulation which make an express reference to the relevant provisions of a directive[38] as well as to provisions of primary law. The phenomenon is not new especially after the use of the provisions of a directive and of fundamental rights that are protected by the Union as general principles which are also sanctioned by the Charter of Fundamental Rights of the European Union (CFREU)[39].

37CJEU, C-188/89, Foster v. British Gas of 12 July 1990, op. cit., parr. 18-20; C-413/15, Farrel of 10 October 2017, ECLI:EU:C:2017:745, published in the electronic Reports of the cases, parr. 33-35.

38CJEU, joined cases C-37/06 and C-58/06, Viamex Agrar Handel and ZVK of 17 January 2008, ECLI:EU:C:2008:18, I-00069.

39CJEU, C-144/04, Mangold of 22 November 2005, ECLI:EU:C:2005:709, I-09981; C-555/07, Kücükdeveci of 18 January 2010, ECLI:EU:C:2010:21, I-00365; C-176/12, AMS of 15 January 2014, ECLI:EU:C:2014:2, published in the electronic Reports of the cases; C-441/14, Dansk Industri of 19 April 2016, ECLI:EU:C:2016:278, published in the electronic Reports of the cases; C-414/16,

Another element is that of reducing the prohibition which consists in the obligation of compliant interpretation, i.e. the indirect effect[40]. In an interpretative way, the domestic provisions with the law of the Union have direct effect which is also enhanced by the CJEU (De Bùrca, 1992; Betlem, 2002). This instrument is expanded (Niglia, 2022) which comes into focus with the horizontal direct effect of fundamental rights where the compliant interpretation seems to assume a logical-legal respect for the direct effect and its own non-application. According to the interpretation of the incompatibility between the law of the Union and the national legal system, it results as a guarantee of the rules that are contained in the directives in an incorrect and complementary manner within the time limit of their transposition.

The Airbnb Ireland case and the extension of the exception as notification of technical rules

In the Airbnb Ireland[41] case of 2019, the activity of Airbnb of

Egenberger of 17 April 2018, ECLI:EU:C:2018:257, published in the electronic Reports of the cases; C-68/17, IR of 11 September 2018, ECLI:EU:C:2018:696, published in the electronic Reports of the cases; joined cases C-569/16 and C-570/16, Bauer of 6 November 2018, ECLI:EU:C:2018:871, published in the electronic Reports of the cases; C-684/16, Max-Planck Gesellschaft zur Förderung der Wissenschaften of 6 November 2018, ECLI:EU:C:2018:874, published in the electronic Reports of the cases; 193/17, Cresco Investigation of 22 January 2019, ECLI:EU:C:2019:43, published in the electronic Reports of the cases.

40CJEU, 14/83, Von Colson and Kamann v Land Nordrhein-Westfalen of 10 April 1984, ECLI:EU:C:1984:153, I-01891, parr. 26-28; C-106/89, Marleasing SA v. Comercial Internacional de Alimentación of 13 November 1990, ECLI:EU:C:1990:395, I-04135.

41CJEU, C-390/18, Airbnb Ireland of 19 December 2019,

the notion was discussed:

"(...) information society service (...) according to Directive 2000/31[42] as well as compatibility according to Art. 3, par. 4, letter. b) of the same directive as the Hoguet law (...)"[43].

A law from the seventies relating to the activity of professionals in the real estate sector which provides for a sanctioning system of a criminal nature which is applicable to the practices of such activities given that it does not have such a licence.

According to Art. 3 of Directive 2000/31, in particular:

"(...) a Member State cannot adopt a measure aimed at limiting the free movement of information society services coming from another Member State, unless it is necessary to protect one of the objectives strictly indicated in letter b) of paragraph 4 of the same article and always in compliance with the principle of proportionality. Before adopting such measures, however, the intention to proceed in this direction must be notified, in addition to the Member State from which the services originate, to the European Commission, responsible for verifying their compatibility with EU law (...)".

France did not notify the Hoguet law to the commission as well as to Ireland, which was an established member of the company Airbnb Ireland.

The related criminal proceedings of Airbnb Ireland supported the relative unenforceability of the Hoguet law given that it established that:

"(...) the principle established in the CIA Security and Unilever sentences can be extended to restrictive measures that constitute an obstacle to the free movement of non-compliant services notified, i.e. beyond the failure to notify mere "technical rules" (...) similarly to what usually happens in the case of technical rules not notified by the Member State (…). The unenforceability of

ECLI:EU:C:2019:1112, published in the electronic Reports of the cases.

42Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, p. 1-16.

43CJEU, C-390/18, Airbnb Ireland of 19 December 2019, op. cit.

a non-notified measure that limits the free provision of information society services can be invoked not only in criminal proceedings (...), but also in a dispute between private individuals (...)"[44].

In the case in question the CJEU applied the relevant substantive procedural obligations by applying by analogy the principles that are enshrined in CIA Security and Unilever as well as restrictive measures derogating from the free movement of services. The argument of direct incidental effects is evident and the technical premises of an analogue application with the related systemic implications of this type of operation are also clear.

We can talk about an opening of the CJEU that reflects on the dichotomy of the creation of the obligation as well as the negative repercussions. As regards the normative impact/normative impact theory as a theory that distinguishes between national rules that directly govern the dispute before the national judge and the factual framework of the rules that find application in the set of legal and factual circumstances that are prominent in controversy. The imposition of a new "obligation" - prohibited in horizontal disputes-would only occur if the direct effect of an EU rule affects the national rules that directly govern the horizontal dispute where the direct effect affects the applicability of a different rule of the national legal system, which is highlighted as a sort of factual or legal "antecedent" in this dispute "and would be in the presence of mere negative

44CJEU, C-390/18, Airbnb Ireland of 19 December 2019, op. cit., par. 97.

repercussions that appears acceptable in the extent to which it reflects the distinction drawn by the Court in Smith between legal rules on the basis of which the national court must resolve the dispute pending before it and other rules adopted by the Member State[45].

This reconstruction confirms the concrete context of the national legislation which has direct effect. This theory appears as an explanation of the CJEU which seems to harbor doubts about the validity of this opening which is prefigured in Airbnb Ireland and which is followed by inter-private disputes. The technical rules that are not notified with the former Directive 2015/1535 as national restrictive measures that have to do with the movement of services include a case that varies the relevant hypotheses as suitable and directly to horizontal disputes that are in conflict with the Smith ruling and the regulatory impact theory. This disapplication is found in horizontal controversies of these rules that distinguish the obligation and the negative repercussions as the basis of the exception that names the incidental direct effects under investigation.

(Follows): The Mangold scheme

According to the exceptions to the prohibition of direct effects in disputes of a horizontal nature that have to do with the

45CJEU, C-122/17, Smith of 7 August 2018, op. cit., par. 53-54.

provisions of a directive and the sources of private law are functionally connected with the sources that are sufficient to integrate the exception in question. In this case we can speak by analogy of the Mangold scheme. These are jurisprudential courses that deal with paid annual holidays according to Art. 31, par. 2 CFREU[46] as we saw in the Bauer and Max Planck sentences. The Mangold scheme and its extension also found a basis on the Thelen Technopark ruling[47] which spoke to us for the joint use of the Services Directive[48] and Art. 49 TFEU (Blanke, Mangiamelli, 2021) as well as Art. 16 CFREU (Peers and others, 2021). These are jurisprudential developments that reconstruct the exception in question as a functional link between primary law and directive.

The non-application of the national provision in disputes between private individuals is linked to the direct effect of the horizontal nature of the primary law rule. The regulatory parameter is assessed according to the compatibility of domestic law with the law of the Union which is represented by the provisions of the directive giving expression to primary law (De Mol, 2010). And within this spirit the Mangold scheme is used as an extension of a Mangold trick.

46CJEU, C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) of 8 March 2022, op. cit., par. 31.

47CJEU, C-261/20, Thelen Technopark of 18 January 2022, ECLI:EU:C:2022:33, not yet published.

48Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36-68.

Extension by analogy of the Mangold scheme

The Bauer and Max-Planck sentences are the main cases that have to do with the payment of compensation for holidays not taken by the employee before the end of their employment relationship. In particular, in the Bauer case it is noted that the employer did not pay compensation to the heirs of the employees according to federal laws on holidays and the German Civil Code which excluded the right to paid holidays and included inheritance. The national provisions have an incompatibility with the law of the Union according to Art. 7 of Directive 2003/883[49] and to what it has been declared previously[50]. The problem concerned the legal consequences of this incompatibility with a horizontal dispute.

The legal consequences are incompatible and raises the preliminary reference that was made in the Max-Planck case as it was found as national law where workers were automatically deprived of their right to paid annual leave and following the employment contract, the right to the compensation and the exercise of their rights during the reference period.

49Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9-19.

50CJEU, C-118/13, Bollacke of 12 June 2014, ECLI:EU:C:2014:1755, published in the electronic Reports of the cases.

The judge of the German Federal Labor Court through the relevant preliminary ruling declared:

"(...) to apply "by analogy" the Mangold-Egenberger[51] jurisprudence, making a distinction with respect to AMS[52]. The continuity professed in the reasoning regarding the direct horizontal effect of the fundamental right to paid annual leave using a logical-argumentative process developed in relation to the principle of non-discrimination is however more apparent than real (...) there would be fundamental rights that require "concrete expression" by the provisions of Union law or national law in order to have direct effects in horizontal disputes[53]. An example of this category is the fundamental right of workers to information and consultation within the company, enshrined in Art. 27 of the Charter and the subject of the AMS[54] ruling (...) on the other hand, (...) the right to annual paid is pursuant to art. 31, par. 2 CFREU and directly effective even in inter-private disputes, for this purpose a mere "pecification of certain aspects" by secondary law is necessary. In the case of Art. 31, par. 2, for example, is Art. 7, par. 1 of Directive 2003/88 to specify that the fundamental right in question must be guaranteed for a period of at least four weeks (...)"[55].

The provisions of the directive aim to complement the regulatory content of the CFREU provision, i.e. the related discrimination that represents the quantum and manner of interaction between the sources that occur. A fundamental right has been protected by the legislation of the Union and by the CFREU (Peers and others, 2021) by a provision of the directive,

51CJEU, joined cases C-569/16 and C-570/16, Bauer of 6 November 2018, op. cit., parr. 53, 83, 85 and 91; C-684/16, Max-Planck of 6 November 2018, op. cit., parr. 50, 72, 74, and 80. C-176/12, AMS of 15 January 2014, op. cit.

52CJEU, joined cases C-569/16 and C-570/16, Bauer of 6 November 2018, op. cit., par. 84; C-684/16, Max-Planck of 6 November 2018, op. cit., par. 73.

53CJEU, joined cases C-569/16 and C-570/16, Bauer of 6 November 2018, op. cit., parr. 84-85. C-684/16, Max-Planck of 6 November 2018, op. cit., parr. 73-74.

54CJEU, C-176/12, AMS of 15 January 2014, op. cit., par. 27.

55Art. 7, par. 1 of the Directive states: "(…) Member States shall take the necessary measures to ensure that every worker benefits from paid annual leave of at least 4 weeks, according to the conditions for obtaining and granting it provided for by national legislation and/or practices (…)".

the distinction between concrete expression and the specification of some aspects that are difficult to trace. The specific and concrete of the legislation operates in secondary law.

It is understood that the Union considers as necessary the detailed regulation of the methods in which the fundamental right comes into play in the context of a specific legal relationship which operates to balance the multiple and different interests that deserve protection involving specific cases.

The CFREU is exclusive with the formulation of its provisions and which defines such interaction between the sources which does not appear convincing given that it is considered as the implementation of the provisions of the CFREU to secondary and national law and as an indisputable and indispensable evidence for the concretization with the approach adopted and in relation to the provisions of the treaties[56].

In contrast to the CJEU[57] the provisions of the treaties are different to their preceptive content which respects the CFREU (Lohse, 2007; Muir, 2020; Peers and others, 2021) in the same rank of primary law in relation to the fundamental rights which are enshrined in the CFREU which it is not consistent with the dichotomy exposed above. The terms “concrete” and

56CJEU, 33/74, Van Binsbergen v. Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid of 3 December 1974, ECLI:EU:C:1974:131, I-01299, parr. 18-27. 2/74, Reyners of 21 June 1974, ECLI:EU:C:1974:68, I-00631, parr. 15-32. C-673/16, Coman and others of 5 June 2018, ECLI:EU:C:2018:385, published in the electronic Reports of the cases, parr. 52-56.

57CJEU, C-414/16, Egenberger of 17 April, 2018, op. cit., par. 7.

"concretization" which were used in the Bauer and Max-Planck sentences[58] underline an act of secondary law which completes the normative content of the fundamental right which is used with the principle of non-discrimination[59]. This is a rule sanctioned today with Art. 21, par. 1 CFREU (Peers and others, 2021) which considers horizontal direct effects established by Art. 21, par. 1 CFREU and considered to have horizontal direct effects, concretized through Directive 2000/78[60].

The extension of the Thelen Technopark ruling

In the Thelen Technopark case the CJEU denied the extension of the Mangold scheme discussed in the previous paragraph.

According to the Advocate General Szpunar in the relevant conclusions[61] expressed the statements of the German Federal Court of Justice which:

"(...) had as their object the legal consequences of incompatibility with Art. 15 of the Services Directive of a national regulation which established minimum tariffs for the services of architects and engineers, establishing the nullity of contracts derogating from these minimum tariffs[62] (...) minimum

58 joined cases C-569/16 and C-570/16, Bauer of 6 November 2018, op. cit., parr. 84-85.

59CJEU, joined cases C-569/16 and C-570/16, Bauer of 6 November 2018, op. cit., parr. 55-60. C-441/14, Dansk Industri of 19 April 2016, op. cit., par. 26; C-414/16, Egenberger of 17 April, 2018, op. cit., parr. 60-69.

60Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16-22.

61CJEU, Conclusions of the Advocate General Szpunar, C-261/20, Thelen Technopark of 15 July 2021, ECLI:EU:C:2021:620, not yet published.

62CJEU, C-377/17, Commission v. Germany of 4 July 2019, ECLI:EU:C:2019:562, published in the electronic Reports of the cases; C-137/18, Hapeg Dresden of 6 February 2020, ECLI:EU:C:2020:84, published in the electronic

and/or maximum tariffs foreseen for access to or operation of a service can be compliant with EU law only if they do not constitute direct or indirect discrimination, are justified by an overriding reason of general interest, and are compliant with the principle of proportionality[63] (...) to the Kirchberg judges were asked whether these national provisions should be disapplied in a dispute exclusively between private individuals, and, secondarily, if violated Art. 49 TFEU or "other general principles of Union law (...)"[64].

The CJEU concentrated on the preliminary question and confirmed the prohibition of direct horizontal effects of the directives[65], considering the issue having to do with art. 49 as inadmissible. According to the referral order, this is an element that highlights the cross-border nature of the dispute[66]. The disapplication is based on Art. 16 CFREU (Peers and others, 2021) which is never referred to the sentence. The conclusions of the Advocate General are focused on the services directive and freedom of establishment as well as on the applicability of the CFREU where the national judge disapplies the provision based on the freedom of establishment of ex Art. 49 TFEU[67] and Art. 15 of the directive[68], (ii) which is by virtue of contractual freedom[69] and the fundamental right which is today enshrined in Art. 16 CFREU[70].

Reports of the cases.

63Art. 15, par. 3, Directive 2006/123.

64CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., par. 23.

65CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., par. 48.

66CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., parr. 49-55.

67CJEU, 2/74, Reyners of 21 June 1974, op. cit.,; C-438/05, The International Transport Workers' Federation and The Finnish Seamen's Union of 11 December 2007, ECLI:EU:C:2007:772, I-10779.

68CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., parr. 34, 36, 42 and 47.

69CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., par. 114.

70CJEU, C-426/11, Alemo-Herron and others of 18 July 2013, ECLI:EU:C:2013:521, published in the electronic Reports of the cases, parr. 30-36.

The arguments of the conclusions are not acceptable for comparing the final decision of the CJEU, offering only ideas for investigation and analysis.

In particular, the Advocate General reported Art. 15 as well as the provisions of Chapter III of Directive 2006/123 which concretizes the freedom of establishment that derives from Art. 49 TFEU[71]. He reports:

"(...) specifying the treaty itself (...)[72] to extend the scope of the freedom of establishment also to purely internal relations (...) (Barnard, 2008)[73] if a given state of fact falls within the scope of Chapter III of Directive 2006/123. The possibility of invoking the freedom of establishment under Article 49 TFEU for the purpose of challenging legislation of a Member State in a dispute against a person must be excluded (...)[74].

It would be necessary to give particular consideration to the problem of the horizontal application of this directive. However, the national judge in practice (must not) take into account the jurisprudence which excludes the horizontal direct effect of directives[75].

The commission in its written observations[76] referred to the non-application of the domestic legislation which is in conflict with Art. 16 CFREU (Peers and others, 2021) according to the conclusions of the Advocate General Szpunar although this was also referred to in the sentence[77]. In our opinion, the extension of

71CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., parr. 34, 36 and 42.

72CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., par. 38.

73CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., parr. 41 and 45.

74CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., par. 42-43, 46.

75CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., par. 47.

76CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., par. 64.

77CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., par. 23.

the Mangold scheme does not appear to be appropriate and direct, effective in relations between private individuals and like most of the directives that are linked to the creation and completion of the internal market, denying the direction that represents an exit strategy of the ban as convincing and identified with two orders of logic.

The technical-legal reason, the functional connection of Art. 16 CFREU (Peers and others, 2021) and the Services Directive respects the types of interaction between sources that characterize the rulings of the CJEU and how they are applied in the Mangold scheme. A perfect correspondence or overlap between the prohibition of minimum and maximum tariffs, discriminatory and not justified by an imperative reason of general interest does not comply with the principle of proportionality where the fundamental right to freedom of enterprise is protected according to Art. 16 CFREU, considering the rule that reaffirms the different provisions[78].

There is no immediate and essential correspondence between the fundamental right to freedom of enterprise and the legal basis of the Services Directive[79] and the objective underlying it. The conclusions of the Advocate General did not offer reasons regarding and in relation to these aspects. This profile represents

78CJEU, joined cases C-569/16 and C-570/16, Bauer of 6 November 2018, op. cit., par. 74; C-414/16, Egenberger of 17 April, 2018, op. cit., par. 75; joined cases C-569/16 and C-570/16, Bauer of 6 November 2018, op. cit., par. 83.

79Art. 47, par. 2, and Articles 53 and 62 TFEU.

the punctum dolens of its proposal (Weatherill, 2014)[80]. According to the theoretical-reconstructive nature suitable for explaining the approach of the CJEU in the Thelen Technopark case it involves reflections of a constitutional nature (Pignarre, 2021; Dubout, 2021) and in the horizontal direct effect it provides a substantial and procedural approach in the case under investigation. In particular:

"(...) the professional, engineer owner of a professional firm, took legal action in order to obtain payment of a sum due by virtue of the application of the minimum tariff (tariff ex lege) prescribed by the aforementioned German law already declared in conflict with EU law, instead of the flat rate agreed in the contract concluded with Thelen Technopark Berlin GmbH, a limited liability real estate company based in Germany (ex contractu rate). The rate ex lege, in fact, was significantly higher than that agreed in the contract (...) the professional's request was accepted by the judge of first instance and confirmed on appeal. The practical consequence of these rulings is essentially the following: in Germany, in a dispute between a professional and a private company-which appeared to have no cross-border character-, the German law in force would have been applied (...) however he would appeal to the Supreme Court ("Revision") before the Federal Court of Justice, the referring judge in the case in question. It is before this Court that European Union law was invoked by the company to see the national legislation setting minimum rates for the services of architects and engineers disapplied. The consequence in practical terms of non-application would have been the possibility of paying the professional a lower remuneration than that established by law (...)"[81].

The legal relationship that emerges between a professional and a private company does not know the element of contractual asymmetry that can be found with the employment relationship (Leczykiewicz, 2013; Supiot, 2015; Bailleux, 2019) as characterized by the Mangold scheme. The case considers and

80CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., par. 64: "(…) so downright odd that it deserves to be locked into a secure container, plunged into the icy waters of a deep lake and forgotten about (…)".

81CJEU, C-261/20, Thelen Technopark of 15 July 2021, op. cit., par. 65.

gives an implicit endorsement that identifies the asymmetry of the possible explanations relating to the direct horizontal effect of the principle of discrimination and the right to annual holidays which are paid (Leczykiewicz, 2013; Frantziou, 2015; Bailleux, 2019; Frantziou, 2019). This perspective that is seen in the Thelen Technopark case has a horizontal nature and is integrated with the exception of the prohibition of horizontal effect of the directives under investigation.

The reconstruction between sources of primary law and directives in cases of horizontal disputes

Trying to analyze the developments (De Witte, 2021) between the interaction of the sources of primary law and the sources of secondary law in the legal system of the Union concerning directives (Muir, 2014; Syrpis, 2015; Hancox, 2020; Guilloud - Colliat, 2020) we note a jurisprudence that is oriented towards various aspects of navigation (Emmert, Pereira De Azevedo, 1993) which identifies the exceptions that represent a functional connection between primary law and the directive. The position of the Advocate General Cruz Villalón in the AMS case (Bailleux, 2019)[82] was based on the concrete expression and specification of some aspects concerning the principles that are enshrined in the CFREU and not the rights that are protected

82CJEU, Conclusions of the Advocate General Cruz Villalón in case C-176/12, AMS of 18 July 2013, ECLI:EU:C:2013:491, published in the electronic Reports of the cases, par. 60ss.

(Lock, 2019; Peers, Prechal, 2021) according to the elaborate notions that appear in the reflection of the Mangold-Egenberger-Bauer sentences (Muir, 2011; Muir, 2014).

A jurisprudential path that is found in the essential characteristics and to the conclusions of the Advocate General Cruz Villalón:

"(...) limit the application of the exception in question (i.e., of the Mangold scheme) to cases in which the provisions of the directive materialize in an essential and immediate way the content of a "principle"[83] (...) to "rights" (...), starting from the analysis of the jurisprudence relating to the general principle of non-discrimination and Directive 2000/78. He has placed an emphasis a) on the exceptional character of the Mangold scheme, partly linked to the centrality and importance of the fundamental rights that were highlighted; and b) on what we have defined above as the functional connection between the provisions of the directive and the fundamental right in question; connection which-in such cases-could be defined as "characterised" (...) the immediate and essential correspondence between the two sources was underlined as it emerges from the legal basis used (art. 19 TFEU) and from the objective indicated in Art. 1 of Directive 2000/78, in particular to make the principle of equal treatment effective in the Member States (…)" (Muir, 2014).

The correspondence and overlap is perfect between the fundamental right and the law enshrined in the directive considering a rule to reaffirm different provisions. The immediate concretization uses the objective purpose of the directive as a fundamental right resulting from the legal basis that uses the objectives of the directive itself. Fundamental right represents and respects the directive by touching on the provisions that represent the functional connection that characterizes the exception of speech that must not occur. The

83CJEU, Conclusions of the Advocate General Cruz Villalón in case C-176/12, AMS of 18 July 2013, op. cit., parr. 63-76.

problem is the distinction of the situations of the provisions of a directive which give a concrete expression to a fundamental right which is complete, effective and directed to the hypotheses of the provisions of secondary law which is limited to specific aspects which concerns the hermeneutics of the provisions of the CFREU to a reflection of the object of the present investigation (Lenaerts, Gutièrrez-Fons, 2020). The interaction problems theoretically do not concern the protection of fundamental rights which are enshrined in the CFREU but also with the rules of the treaties, as we saw in the Thelen Technopark case (De Witte, 2021)[84]. The functional connection does not offer insights regarding the Anglo-Saxon reconstructions of the relationship between directives and treaties since the early 1980s.

The directives defined as definitional directives (Easson, 1981) that precisely define the provisions of the treaties and which specify the application and their horizontal direct effect negatively consider the determination of the criteria that allow the distinction of the directives from others. According to Easson:

"(...) if the Court was able to reach the same result without the aid of the directive (...) this had d been found in recognizing horizontal direct effects to directives that complete and integrate the provisions of the treaties ("supplemental effects of directives"), with respect to which the authors hoped for the adoption of a case-based approach (…)" (Easson, 1981).

84"(…) Mangold-Bauer line of cases had seriously unhinged the coherence of the Court's case-law on the effect of directives, but at least it could be restricted to the application of directives whose main aim was to "implement" a fundamental right, as is the case with the non-discrimination directives (as in Mangold) and with the working time directive (as in Bauer) (…)".

The CJEU attempted to theoretically resolve the systematization of direct effect also through doctrine by asking for the help of the Court (Figueroa Regueiro, 2002) based on the nature of the judicial body. According to the CJEU:

"(...) where it deems necessary, considers itself well entitled to intervene decisively in order to put an end to theoretical discussions relating to constitutional principles of the EU legal system (...) remember the ruling of the Grand Section in Popławski II[85], which untied the Gordian knot regarding the relationship between "direct effect", "primacy" and "disapplication" (…)"[86].

Tool of non-application, immediate, necessary and essential consequence of the direct effect of the directives

Another issue concerns the legal consequences of the direct effect of a rule that contains a directive of national laws. According to the Popławski II ruling:

"(...) the preliminary questions raised in that case had primarily as their object a framework decision. The interpretation of the principle of primacy[87] evidently transcends said legal act, establishing some fixed points valid for the entire legal system of the Union". Having finally resolved the vexed question of the relationship between "direct effect", "primacy" and "non-application" in favor of the model classified as "trigger model" (Dougan, 2007) the non-application is always the "daughter" of the direct effect in conjunction with the primacy" (Miasik, Szwarc, 2021).

The latter, alone, is not even sufficient to integrate the so-called direct exclusion effect. This is of particular importance in the context of this work, impacting on the reflection relating to the

85CJEU, C-573/17, Popławski II of 24 June 2019, op. cit.
86CJEU, C-573/17, Popławski II of 24 June 2019, op. cit.
87CJEU, C-573/17, Popławski II of 24 June 2019, op. Cit.

exceptions to the prohibition of horizontal direct effects of directives[88].

The trigger model seen in the Popławski II case was also confirmed in the Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) and Thelen Technopark cases, based on a systematization that contributes to the resolution of uncertainties that have been open for decades. The same cases lay the foundations for the opening of two new doubts that have to do with the direct effect, primacy and disapplication.

According to the Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) case, the CJEU affirms:

"(…) the requirement of proportionality of the sanctions referred to in Art. 20 of Directive 2014/67 has direct effect". This has to answer the question that can be summarized as follows: what should be meant by "non-application of the national rule incompatible with EU law"?. The question is whether the principle of primacy imposes on national authorities the obligation to disapply, in its entirety, national legislation contrary to the requirement of proportionality of sanctions (or) whether it implies that said national authorities exclude the application of a such legislation only within the limits necessary to allow the imposition of proportionate sanctions"[89].

The Advocate General Bobek[90] stated that:

"(...) in order to guarantee the full effectiveness of the requirement of proportionality of the sanctions, the national judge is called upon to disapply the part of the national legislation from which the disproportionate nature of the sanctions derives, in order to achieve to the imposition of proportionate

88CJEU, C-573/17, Popławski II of 24 June 2019, op. cit., parr. 59-68.

89CJEU, C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) of 8 March 2022, op. cit., par. 34.

90Conclusions of the Advocate General Bobek in case C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) of 23 September 2021, ECLI:EU:C:2021:759, not yet published, parr. 86 ss. Conclusions of the Advocate General Bobek in case: C-193/17, Cresco Investigation of 25 July 2018, ECLI:EU:C:2018:614, published in the electronic Reports of the cases, par. 147.

sanctions, which remain, at the same time, effective and dissuasive[91]. It is clear that the conclusion reached is not called into question by the principles of legal certainty, the legality of crimes and penalties as well as equal treatment[92]. It is clear that such a "surgical disapplication"[93] could create delicate problems of reconciling the aforementioned principles with the effectiveness of Union law (...)".

In the Thelen Technopark ruling, the CJEU, relying on the Popławski II[94] and Smith[95] rulings, stating that:

"(...) a provision of EU law which has no direct effect remains without prejudice to the possibility for the national judge, as well as for any competent national administrative authority, to disapply, on the basis of domestic law, any provision of national law contrary to a provision of Union law which has no such effect (…)". This is a statement, on the one hand, which has no precedent in the jurisprudence of the Court of Justice, and, on the other hand, whose legal implications appear far from clear (…)"[96].

The passage of the motivation under investigation in our opinion presents itself as a paradigm of a development of the direct effect of the directives which considers as reassuring the national judges of some Member States which appear in a useful way to a national system which provides for the consent of non application of a national act which conflicts with the law of the Union. A national judge in a dispute between private individuals

91Conclusions of the Advocate General Bobek in case C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) of 23 September 2021, op. cit., par. 42.

92Conclusions of the Advocate General Bobek in case C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) of 23 September 2021, op. cit., par. 45.

93Conclusions of the Advocate General Bobek in case C-205/20, Bezirkshauptmannschaft Hartberg-Fürstenfeld (Effet direct) of 23 September 2021, op. cit., par. 97.

94CJEU, C-573/17, Popławski II of 24 June 2019, op. cit., par. 68, which is affirmed that: "(…) a national judge is not obliged, on the sole basis of Union law, to disapply a provision of his national law which is contrary to a provision of Union law, where the latter provision has no direct effect (…)".

95CJEU, C-122/17, Smith of 7 August 2018, op. cit., par. 49.

96CJEU, C-261/20, Thelen Technopark of 18 January 2022, op. cit., par. 33.

finds a conflict between a provision of a directive that recognizes the CJEU and effectively the sub-legislative regulatory act with a government or ministerial regulation. It still remains in doubt. Perhaps we should say the question of non-application as a consequence of the primacy of the direct effect is open. These are situations where the CJEU has actually recognized the relevant exceptions to the disapplication obligation and to the related national provision which is incompatible with a rule of a directive which is directly effective. These are categories, manifestations of exception to disapplication (Dougan, 2019).

The CJEU left it to the national judge to disapply the need to strike a fair balance between interests. In this case we refer to the Österreichischer Rundfunk ruling1[97], where the CJEU stated that:

"(...) national authorities-in place of disapplication-have the obligation to extend, on a temporary basis, prerogatives attributed in domestic law to certain categories of persons physical and legal entities also to other legal entities (...) exception occurs in particular in the field of non-discrimination and represents a particular hypothesis of application of the instrument called "leveling up" the exception with respect to non-application is provided, precisely, on a temporary basis, i.e. until the adoption of an ad hoc national law that remedies the incompatibility with EU law (...)"[98].

This hypothesis just exposed above is also noted in the Cresco Investigation case where the non-application of the national

97CJEU, joined cases C-465/00, C-138/01 and C-139/01, Österreichischer Rundfunk of 20 May 2003, ECLI:EU:C:2003:294, I-04989.

98CJEU, C-193/17, Cresco Investigation of 25 July 2018, op. cit., par. 148, 155-171.

provision provides workers belonging to religious minorities who are in conflict with the prohibition of any discrimination based on religion, determining the guarantees of protection of the rights of subjects without attributing to the benefit the group of subjects who are disadvantaged by this provision. This position depends on the national legislation and on the fact that it is not incompatible with the law of the Union and destined to have to be disapplied to a rule that confers an advantage on a certain group of subjects.

The suspension of the non-application of direct, effective directives to the rules is based on the application by analogy of Art. 264 TFEU (Blanke, Mangiamelli, 2021) and in the preliminary ruling which protects imperative needs and legal certainty (Blanquet, 2018). This exception applies under certain conditions to the sectors of Union law as a public monopoly having to do with sports betting[99], environment[100] and electricity supply[101]. In the Inter-Environnement Wallonie I case the CJEU stated that:

"(...) if there is an incompatibility between a national law and a specific provision of a directive, the latter must otherwise have been correctly transposed into national law. Secondly, it must be recognized that it is

99CJEU, C-409/06, Winner Wetten of 8 September 2010, ECLI:EU:C:2010:503, I-08015.

100CJEU, C-41/11, Inter-Environnement Wallonie I of 28 February 2012, ECLI:EU:C:2012:103, published in the electronic Reports of the cases; C-379/15, Association France Nature Environnement of 28 July 2016, ECLI:EU:C:2016:603, not yet published.

101CJEU, C-411/17, Inter-Environnement Wallonie II of 29 July 2019, ECLI:EU:C:2019:622, published in the electronic Reports of the cases.

impossible to promptly remedy the prejudices deriving from the disapplication of the internal rule incompatible with EU law (...). The legal vacuum that would result from the disapplication of the internal rule would cause greater harm to the objectives pursued by the directive than the suspension of non-application. It consists of the circumstance whereby the suspension of non-application must be temporary and limited in time (...)"[102].

The regulatory premises in the sectors that come into focus, as well as the methods of application of these hypotheses, are different and this identifies a trend that underlies the jurisprudence of the CJEU as being declinable in fixed points. The nature of the exception and the need to be interpreted and applied in a restrictive manner has as its basis the disapplication which remains the rule today. The exception is evident in its sectoral nature in its temporal delimitation and is defined by the CJEU as strictly necessary for the national legislator which structurally remedies the incompatibility and the evaluation and work that Luxembourg judges carry out.

The non-application of the national rule that conflicts with Union law is counterproductive. The result is opposite to the direct effect where the disapplication undermines the effectiveness of the directive as an instrument, which can also be found in exceptional cases where the national judge evaluates the appropriateness of the disapplication which strikes a fair balance between opposing interests. The effectiveness of a specific case brings to the attention of the CJEU as an interest worthy of protection and of the dimension of the effectiveness

102CJEU, C-411/17, Inter-Environnement Wallonie II of 29 July 2019, op. cit., parr. 58-62.

of the Union that exists in the prospective dimension. The effectiveness of the law of the Union pursues and analyses, also in a medium-long term, implements cases involving disapplication which is not even necessary but as an immediate consequence of the direct effect of the directives.

Is direct effect a constitutional and/or federal issue?

These problems have the "chameleonic" nature of the direct effect itself (Steiner, 1982) and the nature and peculiarities of the source of the law in question. The balance between the effectiveness of the law of the Union respects the vertical division of powers and competences between Member States and the Union which affects the instrument of the directive. The constitutional, federal significance of the topic under investigation is understood (Dashwood, 1977; Craig, 1992).

The developments that we have seen through jurisprudence reflect the need for the effectiveness of Union law and respect for the vertical division of competences of a casuistic logic (Figueroa Regueiro, 2002). The theme places the idea of a cooperative federalism (cooperative federalism) or collaborative federalism (dual federalism) where the ordering of the Union (Corwin, 1950; Schütze, 2009) refers to sovereignty, to the variety of sectors of action of the Union which is shared between the federal level and does not enter the exclusive sphere

of competence of one of the levels of government (Schütze, 2009). The nature and peculiarity of the instrument represents the directives and reflects that the jurisprudence, i.e. the position of the CJEU has not held a compliant line from beginning to end. A story of the direct effect that does not represent technicalities that are inherent with the process of European integration in the phase that is connected (Clèment-Wilz, 2018). Thus, some jurisprudential strands are identified and based on the reasoning, systematization and necessary precision where the distinction between prohibited obligation and determination of the negative repercussions allowed in horizontal disputes are at the center of jurisprudence as can already be seen from the Smith case where the impact theory regulatory extends the exception beyond the notification of technical rules as we saw in the Airbnb Ireland case which made us think about various topics that had to do with technical rules not notified pursuant to Directive 2015/1535, as well as the category of national measures which had a restrictive nature in the circulation of services which includes the case which includes rules not notified as suitable and directly in disputes between private individuals. This position conflicts with the distinction between the obligation of negative repercussions that lay the foundation for this exception. The exception to the prohibition of horizontal direct effects of directives according to the Mangold scheme has

shown us that the exception based on the interaction between provisions of a primary law directive, general principles of law, fundamental rights of the CFREU, treaty provisions that allow a legal rule that establishes the sources of primary and secondary law and has direct effect which determines the non-application of a measure that is in conflict with the horizontal controversies. Jurisprudence has shown us that the exceptions in the Mangold scheme are linked to the centrality, the importance of fundamental rights, functional connections are found that characterize the provisions of the directives which make us think of the AMS case.

The discussion of situations also remains open where the provisions of a directive give a concrete expression to a fundamental right with a complete, direct, effective way to specify certain aspects. The functional connection between direct effect, primacy and obligation of non-application constitutes the main remedy in the incompatibility between Union and national law. The non-application has a surgical nature which is based on national law, thus diminishing the role of the European integration process, where the effectiveness of the law of the Union includes the effectiveness of the rights which are sanctioned by directives and which guarantees the non-application as an effectiveness of a specific case, of a prospective dimension where the effectiveness of the law of the

Union pursues and achieves in the medium-long term, making some cases worthy of being analyzed.

The compliant interpretation (Betlem, 2002; Niglia, 2018; Frantziou, 2020; De Bùrca, 2021) is preferable to the direct effect-non-application combination which responds to the ideas of cooperative federalism of the Union. A suitable tool that scales back the prohibition on the direct effect of directives between private entities. The Mangold scheme allows an obligation of interpretation compliant with the jurisprudence of the CJEU in horizontal disputes contributing its effectiveness in the remedy of disapplication (Frantziou, 2020) and within the limits that have to do with the direct effectiveness of the directives in the typology of disputes. The Popławski II ruling laid the foundations for the need to limit the disapplication which is contrary to the rules of the Union and to the direct effect (trigger model) which is suitable for increasing the possibilities of resorting to the instrument of indirect and direct effect, thus increasing the expectations of the national judge and the obligation of compliant interpretation (Miasik, Szwarc, 2021).

After 50 years from the Van Duyn case, there are many problems, open and under discussion due to the direct effect of the directives where the CJEU tried to deal with many cases and considering only some resolved ones that we only see in the near

future as the basis for resolving the issues which still deserve to be investigated.

References

Arnull, A. (1986). The direct effect of directives: Grasping the nettle. *The International and Comparative Law Quarterly, 35 (4),* 942ss.

Bailleux, A. (2019). Article 52.2. Portée et interprétation des droits et principes. In F. Picod, C. Rizcallah, S. Van Drooghenbroeck (dir.). *Charte des droits fondamentaux de l'Union européenne. Commentaire article par article.* ed. Bruylant, Bruxelles, 1287-1319, 1314ss.

Bailleux, A. (2019). L'effet direct horizontal des droits fondamentaux. Le critère du pouvoir-savoir, ligne claire de la jurisprudence?. *Revue des Affaires Européennes, 2,* 329-334.

Barnard, C. (2008). Unravelling the services directive. *Common Market Law Review, 45 (2),* 324ss.

Barnard, C., Peers, S. (2020). *European Union law.* Oxford University Press, Oxford.

Becker, F., Campbell, A. (2007). The direct effect of European directives: Towards the final act?. *Columbia Journal of European Law, 13 (2),* 402ss.

Betlem, G. (2002). The doctrine of consistent interpretation. Managing legal uncertainty. *Oxford Journal of Legal Studies, 22 (3),* 397-418.

Blanke, H.J., Mangiamelli, S. (2021). *Treaty on the Functioning of the European Union. A commentary*. ed. Springer, Berlin,

2021.

Blanquet, M. (2018). *Droit général de l'Union européenne.* ed. Sirey, Paris, par. 816.

Bobek, M. (2020). The effects of EU law in the national legal systems. In C. Barnard, S. Peers (eds.). *European Union Law.* Oxford University Press, 2020, 155, 160ss.

Bobek, M. (2023). Why is it better to treat every provision of EU directives as having horizontal direct effect?. *International Journal of Comparative Labour Law and Industrial Relations, 39 (2),* 212ss.

Broberg, M., Fenger, N. (2022). If you love somebody set them free: On the Court of Justice's revision of the acte clair doctrine. *Common Market Law Review, 59 (3),* 712ss.

Chalmers, D., Davies, G., Monti, G. (2019). *European Union Law.* Cambridge University Press, Cambridge, 294ss.

Clèment-Wilz, L. (dir.). (2018). *Le rôle politique de la Cour de justice de l'Union européenne*. ed. Larcier, Intersentia, Bruxelles

Colgan, D. (2002). Triangular situations: The coup de grâce for the denial of horizontal direct effect of community directives. *European Public Law, 8 (4),* 548ss.

Constantinesco, L.G. (1977). *Das Recht der Europäischen Gemeinschaften.* ed. Nomos, Baden-Baden, 614ss.

Coppel, J. (1994). Rights, duties and the end of Marshall. *The Modern Law Review, 57 (6),* 859-879

Corwin, E.S. (1950). The passing of dual federalism. *Virginia Law Review, 36 (1)*, 1-24.

Craig, P. (1992). Once upon a time in the West: Direct effect and the federalization of EEC law. *Oxford Journal of Legal Studies, 12 (4),* 454ss.

Craig, P. (2009). The legal effect of Directives: Policy, rules and exceptions. *European Law Review, 34 (3),* 352ss.

Craig, P., De Bùrca, G. (2020). *European Union Law. Text, cases and materials.* Oxford University Press, Oxford. 224ss.

Curtin, D. (1990). Directives: The effectiveness of judicial protection of individual rights. *Common Market Law Review, 27,* 711ss.

Dashwood, A. (1977). The principle of direct effect in European Community Law. *Journal of Common Market Studies, 16 (3),* 232ss.

Dashwood, A. (2006-2007). From Van Duyn to Mangold via Marshall: Reducing direct effect to absurdity?. *Cambridge Yearbook of European Legal Studies, 9,* 83ss.

De Bùrca, C. (1992). Giving effect to European Community Directives. *The Modern Law Review, 55 (2),* 215-240.

De Mol, D. (2010). Kücükdeveci: Mangold revisited-horizontal direct effect of a general principle of EU law. *European Constitutional Law Review, 6 (2),* 296ss

De Schutter, O. (2012). Human rights in employment

relationships: Contracts as power. *CRIDHO Working 2012/03*

De Witte, B. (2021). Direct effect, primacy, and the nature of the legal order. In P. Craig, G. De Bùrca (eds.). *The evolution of European Union law.* Oxford University Press, Oxford, 188, 194-195.

Dougan, M. (2007). When worlds collide! Competing visions of the relationship between direct effect and supremacy. *Common Market Law Review, 44 (4)*, 932ss.

Dougan, M. (2019). Primacy and the remedy of disapplication. *Common Market Law Review, 56 (6),* 1462ss.

Dubout, E. (2010). L'invocabilité d'éviction des directives dans les litiges horizontaux. Le "bateau ivre" a-t il sombré?. *Revue Trimestrielle de Droit Européen, 46 (2),* 279ss.

Dubout, E. (2021). *Droit constitutionel de l'Union europèenne*. ed. Larcier, Bruxelles

Easson, A.J. (1981). EEC directives for the harmonisation of laws: Some problems of validity, implementation and legal effects. *Yearbook of European Law, 1 (1),* 1-44.

Emmert, F. (1992). Horizontale Drittwirkung von Richtlinien? Lieber ein Ende mit Schrecken als ein Schrecken ohne Ende!, *Europaeisches Wirtschafts-und Steuerrecht, 65,* 56-67.

Emmert, F., Pereira De Azevedo, M. (1993). L'effet horizontal des directives-La jurisprudence de la CJCE: un bateau ivre?. *Revue Trimestrielle de Droit Européen, 29 (3),* 503-524.

Figueroa Regueiro, P.V. (2002). Invocability of substitution and invocability of exclusion: Bringing legal realism to the current developments of the case-law of "horizontal" direct effect of directives. *Jean Monnet Working Paper, n. 7*

Frantziou, E. (2015). The horizontal effect of the EU Charter of Fundamental Rights: Rediscovering the reasons for horizontality. *European Law Journal, 21 (5),* 658ss.

Frantziou, E. (2019). *The horizontal effect of fundamental rights in the European Union: A constitutional analysis.* Oxford University Press, Oxford

Frantziou, E. (2020). The horizontal effect of the Charter: Towards an understanding of horizontality as a structural constitutional principle. *Cambridge Yearbook of European Legal Studies, 24,* 224ss.

Gallo, D. (2022). Rethinking direct effect and its evolution: a proposal. *European Law Open, 1 (3),* 576-605

Galmot, Y., Bonichot, J.C. (1988). La Cour de Justice des Communautés européennes et la transposition des directives en droit national. *Revue Française de Droit Administrative, 4 (1),* 15-25

Guilloud-Colliat, L. (2020). La Charte des droits fondamentaux et les actes législatifs de l'Union européenne: de la subordination à la concrétisation. In R. Tinière, C. Vial (eds.). *Les dix ans de la Charte des droits fondamentaux de l'Union*

européenne. Bilan et perspectives. ed. Larcier, Bruxelles, 208ss.

Hancox, E. (2020). The relationship between the charter and general principles: Looking back and looking forward. *Cambridge Yearbook of European Legal Studies, 22,* 238ss.

Komárek, J. (2013). Reasoning with previous decisions: Beyond the doctrine of precedent. *American Journal of Comparative Law, 61,* 152ss.

Kovar, R. (1987). Observations sur l'intensité normative des directives. In F. Capotorti et al. (dir.). *Du droit international au droit de l'intégration. Liber Amicorum Pierre Pescatore.* ed. Nomos, Baden-Baden, 361ss.

Lackhoff, K., Nyssens, H. (1998). Direct effect of Directives in triangular situations. *European Law Review, 23,* 398, 402

Leczykiewicz, D. (2013). Horizontal application of the Charter of Fundamental Rights. *European Law Review, 38*, 482ss.

Lenaerts, K., Corthaut, T. (2006). Of birds and hedges: The role of primacy in invoking norms of EU law. *European Law Review, 31 (3),* 287-315.

Lenaerts, K., Gutièrrez-Fons, J.A. (2010). The constitutional allocation of powers. *Common Market Law Review, 47,* 1632ss.

Lenaerts, K., Gutièrrez-Fons, J.A. (2020). *Les méthodes d'interprétation de la Cour de justice de l'Union européenne.* Ed. Larcier, Bruxelles, 108ss.

Lock, T. (2019). Rights and principles in the EU Charter of Fundamental Rights. *Common Market Law Review, 56 (5),* 1202ss.

Lohse, E.J. (2007). Fundamental freedoms and private actors. Towards an "indirect horizontal effect". *European Public Law, 13,* 159-190.

Louis, J.V., Vandersanden, G., Waelbroeck, D., Waelbroeck, M. (1993). Commentaire Mégret. Vol. 10: *La Cour de justice; Les actes des institutions.* Éditions de l'Universitè de Bruxelles, Bruxelles, 513ss.

Miasik, D., Szwarc, M. (2021). Primacy and direct effect-still together: Popławski II. *Common Market Law Review, 58 (2),* 574ss.

Muir, E. (2011). Of ages-and edges of-European Union Law. *Common Market Law Review, 48 (1),* 42, 61ss

Muir, E. (2014). The fundamental rights implications of EU legislation: Some constitutional challenges. *Common Market Law Review, 15,* 222ss.

Muir, E. (2020). The horizontal effects of charter rights given expression to in EU legislation, from Mangold to Bauer. *Review of European Administrative Law, 2,* 188ss.

Munro, R., Williams, R. (2021). The Court of Justice in the archives project analysis of the Van Duyn case (41/74). *AEL working paper, 2021/05:*

https://pure.strath.ac.uk/ws/portalfiles/portal/130558758/Munro_Williams_2021_The_court_of_justice_in_the_archives_project.pdf

Niglia, L. (2022). Conforming interpretation. *European Review of Private Law, 30 (4),* 638ss.

Peers, S. and others (eds.). (2021). *The EU Charter of Fundamental Rights, A Commentary.* Hart Publishing, Nomos, C.H. Beck, Oxford & Oregon, Portland.

Peers, S., Prechal, S. (2021). Article 52. In S. Peers, T. Hervey, J. Kenner, A. Ward (eds.). *The EU Charter of Fundamental Rights. A commentary,* Hart Publishing, Oxford & Oregon, Portland, 1612ss.

Pignarre, P.E. (2021). *La Cour de justice de l'Union europèenne juridiction constitutionelle*. ed. Larcier, Bruxelles.

Prechal, S. (2006). *Directives in EC Law.* Oxford University Press, Oxford, 6ss.

Ruffert, M. (1997). Rights and remedies in European Community Law: A comparative view. *Common Market Law Review, 8 (4),* 309ss.

Schütze, R. (2009). *From dual to cooperative federalism.* Oxford University Press, Oxford, 1-10

Schütze, R. (2018). Direct effects and indirect effects of Union Law. In R. Schütze, T. Tridimas (eds.). *Oxford principles of European Union Law: Volume I The European Union Legal*

Order. Oxford University Press, Oxford, 268ss.

Schütze, R. (2021). *European Union Law*. Oxford University Press, Oxford, 162.

Simmonds, K.R. (1975). Van Duyn v. The Home Office: The direct effectiveness of directive. *The International and Comparative Law Quarterly, 24,* 422ss.

Simon, D. (1997). *La directive européenne.* ed. Dalloz, Paris, 59ss.

Simon, D. (1997). *Le système juridique communautaire.* PUF, Paris, 395, 457ss.

Snyder, F. (1993). The effectiveness of European Community Law: Institutions, processes, tools and techniques. *The Modern Law Review, 56* (1), 22ss.

Squintani, L., Lindenboom, J. (2019). The normative impact of invoking Directives: Casting light on direct effect and the elusive distinction between obligations and mere adverse repercussions. *Yearbook of European Law, 38,* 22ss.

Steiner, J. (1982). Direct applicability in EEC law. A chameleon concept. *Law Quarterly Review, 98,* 232ss.

Supiot, A. (2015). *Critique du droit du travail.* ed. PUF, Paris, 112ss.

Syrpis, P. (2015). The relationship between primary and secondary law in the EU. *Common Market Law Review, 52 (2),* 462ss.

Timmermans, C.W.A. (1979). Directives: Their effects within the national legal systems. *Common Market Law Review, 16,* 533-555.

Tridimas, T. (1994). Horizontal effect of directives: a missed opportunity?. *European Law Review, 19,* 622ss.

Tridimas, T. (2001). Black, white, and shades of grey: Horizontality of directives revisited. *Yearbook of European Law, 21 (1),* 327-354.

Tridimas, T. (2012). Precedent and the Court of Justice. A jurisprudence of doubt?. In J. Dickson, P. Eleftheriadis (eds.). *Philosophical foundations of European Union Law*. Oxford University Press, Oxford. 308ss.

Varner, C.A. (2001). The effectiveness of European Community law with specific regard to directives: The critical step not taken by the European Court of Justice. *Michigan Journal of International Law, 22,* 458ss.

Weatherill, S. (2014). Use and abuse of the EU's charter of fundamental rights: On the improper veneration of "freedom of contract". *European Review of Contract Law, 10 (1),* 168-182

Wyatt, D. (1983). The direct effect of community social law, Not forgetting. Directives. *European Law Review, 8,* 242ss.